

prepayment of fees and affidavit of indigency. Petitioner was provided twenty-one (21) days to file one or the other.

On October 19, 2016, the Clerk of Court mailed Petitioner a second notice of deficiency, providing him another 21 days to pay the \$5.00 filing fee or an application to proceed without prepayment of fees and affidavit of indigency. (Doc. No. 2.) The notice also warned Petitioner that if he did not comply with this filing requirement, his Petition could be dismissed without further notice for failure to prosecute. (Id.)


As of the filing of this Order, Petitioner has filed neither the fee nor an application to proceed without prepayment of fees and affidavit of indigency. He has had more than sufficient time to do so. Therefore, the Court will dismiss the habeas petition without prejudice to Petitioner's ability to refile it, along with a \$5.00 filing fee or an application to proceed without prepayment of fees and affidavit.

IT IS, THEREFORE, ORDERED that:

- 1) The Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 1) is **DISMISSED without prejudice**; and
- 2) Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive

procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: December 5,



Frank D. Whitney
Chief United States District Judge

